

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Consider
the Adoption of a General Order and
Procedures to Implement the Digital
Infrastructure and Video Competition Act
of 2006.

R. 06-10-005

COMMENTS OF THE CALIFORNIA CABLE AND TELECOMMUNICATIONS
ASSOCIATION ON THE PROPOSED DECISION OF COMMISSION CHONG
RESOLVING ISSUES IN PHASE II.

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the California Cable and Telecommunications Association (CCTA) hereby files its Comments on the Proposed Decision of Commissioner Chong (PD) in Phase II of the above-captioned proceeding. The PD's adoption of safe harbor build-out and nondiscrimination requirements for state franchise holders with fewer than 1,000,000 telephone customers in California that largely mirror statutory requirements for telephone providers with more than one million telephone customers reflects CCTA's Comments in this proceeding, and is sound both legally and factually. Accordingly, the safe harbor provisions should be adopted by the Commission.

However, the PD also requires state video franchise holders to report the number of video customers by census tract in addition to the number of households that are offered video service, on the premise that this data will be useful to ensure enforcement of nondiscrimination and build-out provisions. While the Commission may have a legitimate interest in gathering this additional information for state franchise holders opting to fulfill the build-out requirement by satisfying the safe harbor standard adopted

here, or for a state franchise holder which seeks its own company-specific build-out requirements, there is no basis for gathering this data from a holder that has already satisfied the build-out requirement by establishing by affidavit that it offers video service to all of its telephone customers. Thus, this requirement must be eliminated for state franchise holders which have already established that they have satisfied the build-out requirement of §5890(b) and have complied with the affidavit requirements imposed by GO 169.

I. The Obligation to Report Actual Video Customers Is Unwarranted If The State Franchise Holder Offers Video To All Its Telephone Customers

The PD correctly recognizes that DIVCA sets forth the fundamental principle that cable operators or video service providers may not discriminate against or deny access to service to any group of potential residential subscribers because of income of the residents. To this end, DIVCA requires all state franchise holders to provide nondiscriminatory access to their video service, so that certain minimum percentages of low income households are provided access to the holder's video product within specified periods, depending on the technology the franchise holder is deploying.

The PD correctly extends these benchmarks for providing access to low-income households to franchise holders with fewer than one million telephone customers, but provides that if a franchise area has a low proportion of low-income households, the franchise holder need only demonstrate that access provided to low income households correlates to the total percentage of low income households in the franchise area.¹

¹ Of course, the fact that the franchise area may have a low percentage of low income households may itself be a sign that the state franchise holder has engaged in redlining by self-defining its franchise area narrowly to exclude certain neighborhoods, and the commission should review compliance with this in mind.

In addition, DIVCA contains requirements for building-out facilities to guarantee that state franchise holders continue to deploy facilities throughout a significant portion of its franchise area, presumably to reduce the opportunity a state franchise holder might otherwise have to redline certain communities.

In order to assist in “ensuring enforcement of the nondiscrimination and build-out provisions,” the PD concludes that the Commission should require state video franchise holders to report the number of video customers by census tract in addition to the current requirement to provide the number of households that are offered video service. The PD further finds that this new reporting requirement will help the Commission to determine whether to initiate action on its own motion to enforce § 58990(a).

In Phase I of this proceeding, the Commission found it had the authority to impose additional reporting requirements (D. 07-03-014 at 152). However, the Phase I Decision confined the imposition of new reporting requirements only in circumstances where “they are truly necessary for the enforcement of specific DIVCA provisions under [its] regulatory authority” (*Id.*). As discussed here, the new reporting requirement is unnecessary for the enforcement of DIVCA build-out and nondiscrimination requirements when the state franchise holder has met the build-out requirement.

As enumerated in General Order 169, a state franchise holder can select one of three options, or conditions, for fulfilling build-out obligations imposed by DIVCA. These conditions include:

- 1) within 30 days of the issuance of its State Video Franchise, the State Video Franchise Holder submits an affidavit to the Commission that establishes that all of the State Video Franchise Holder’s telephone customers are offered Video Service by the State Video Franchise Holder;

2) the State Video Franchise Holder satisfies a safe harbor standard adopted in a Commission rulemaking (presumably, the safe harbor standard adopted in the PD); and

3) the State Video Franchise Holder satisfies a company-specific build-out requirement adopted by the Commission.

While the Commission may be capable of supporting its requirement for information relating to video subscribers for state franchise holders opting to comply with build-out requirements by satisfying options 2) or 3) above, there is no potential that a state franchise holder that has established that it has already met its build-out obligation pursuant to option 3) will fail to meet the build-out obligation or trigger an investigation by the Commission regarding compliance.

Further, there is little risk that a state franchise holder will fail to provide video service to a proportionate percentage of low income households if the state franchise holder has built its system substantially throughout the franchise area. Even if this were a concern, the information already required to be reported, including the number of low-income households in each census tract of the state video franchise holder, and the number of low income households offered video service, will provide sufficient information where a system is already built out to assess whether a state franchise holder that has satisfied the DIVCA build-out requirement has somehow failed to provide access to low income areas in the franchise, rendering the new additional material unnecessary for the enforcement of DIVCA.

Accordingly, the requirement to report the number of video customers by census tract should be eliminated for state franchise holders that have complied with the build-out

requirement by submitting an affidavit to the Commission establishing that they have fulfilled the build-out obligations.

Dated: September 13, 2007

Respectfully submitted,

/S/ Lesla Lehtonen

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served a copy of the *COMMENTS OF THE CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION ON THE PROPOSED DECISION OF COMMISSIONER CHONG RESOLVING ISSUES IN PHASE II*, together with this Certificate of Service, upon the following parties, by causing a copy hereof to be delivered via E-mail and/or U.S. Post upon all parties in the proceeding R.06-10-005.

Executed on September 13, 2007 at 360 22nd Street #750, Oakland CA 94612

/S/ Maria Politzer
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